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July 1, 2020

VIA EMAIL

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AND ECF

The Honorable Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

*Re: Victor Lopez and On Behalf of All Other Persons Similarly Situated v. Yard House
USA, Inc.; Case No. 1:19-cv-09908*

Dear Judge Torres:

The Parties in the above referenced case respectfully request that discovery be stayed pending a decision by the United States Court of Appeals for the Second Circuit in several appeals of dismissals of nearly identical cases.

By way of background, Plaintiff filed his Complaint on October 25, 2019. (Doc. 1). The Court held an initial pretrial conference on February 6, 2020, and issued the Case Management and Scheduling Order that same day. (Docs. 15, 18). Defendant filed a Motion to Dismiss on March 2, 2020. (Docs. 24–25). Plaintiff then filed an Amended Complaint on March 6, 2020. (Doc. 26). Pursuant to Section III of Your Honor's Individual Rules of Practice in Civil Cases Defendant filed a letter to the Court outlining the basis for Defendant's proposed Motion to Dismiss the Amended Complaint on March 19, 2020. (Doc. 27). Plaintiff filed his letter in opposition to Defendant's proposed Motion to Dismiss the Amended Complaint that same day. (Doc. 29). Then on May 19, 2020, the Parties filed a motion to extend the discovery deadlines in light of the COVID-19 pandemic. (Doc. 29). The Court granted the motion to extend the discovery deadlines on May 20, 2020, thereby extending the deadline for fact discovery to October 6, 2020, and the deadline for expert discovery to October 20, 2020. (Doc. 30). The Court also issued an order on May 20, 2020, directing Defendant to file its Motion to Dismiss the Amended Complaint by June 10, 2020. (Doc. 31). Accordingly, Defendant filed its Motion to Dismiss the First Amended Complaint on June 9, 2020. (Docs. 33–34). Plaintiff's filed his

The Honorable Analisa Torres
July 1, 2020
Page 2

response in opposition on June 28, 2020. (Doc. 35). Defendant filed its reply in support of the motion to dismiss on June 30, 2020. (Doc. 36). Accordingly, the Motion to Dismiss the First Amended Complaint is fully briefed and presently pending before the Court.

In the meantime, however, the United States District Court for the Southern District of New York has dismissed several nearly identical cases under Fed. R. Civ. P. 12(b)(1) and 12(b)(6)—the same grounds upon which Defendant has moved to dismiss Plaintiff's First Amended Complaint. *See, e.g., Dominguez v. Banana Republic, LLC*, No. 1:19-cv-10171-GHW (S.D.N.Y. Apr. 23, 2020); *Mendez v. Ann Taylor, Inc.*, No. 1:19-cv-10625-GHW (S.D.N.Y. Apr. 24, 2020); *Calcagno v. Swarovski N. Am. Ltd.*, No. 1:19-cv-10536-GHW (S.D.N.Y. Apr. 24, 2020); *Calcagno v. The Art of Shaving-FL, LLC*, No. 1:19-cv-10432-GHW (S.D.N.Y. Apr. 27, 2020). The plaintiffs in those cases have appealed the dismissals and the appeals are presently pending before the Second Circuit. *See Dominguez v. Banana Republic, LLC*, No. 20-1559 (2d DCA May 13, 2020); *Mendez v. Ann Taylor, Inc.*, No. 20-1550 (2d DCA May 13, 2020); *Calcagno v. Swarovski N. Am. Ltd.*, No. 20-1552 (2d DCA May 13, 2020); *Calcagno v. The Art of Shaving-FL, LLC*, No. 20-1594 (2d DCA May 18, 2020). These appeals are currently placed on the Second Circuit's Expedited Calendar. Various judges in the Southern District have therefore stayed similar cases pending the outcome of the appeals.

In light of the aforementioned appeals on the Second Circuit's Expedited Calendar, the Parties respectfully request that all discovery and discovery deadlines be stayed pending resolution by the Second Circuit. A decision by the Second Circuit may be dispositive of this case and a stay of discovery would allow the Parties to avoid spending time and resources on a case that may, ultimately, be dismissed pursuant to a ruling by the Second Circuit.

The Parties thank the Court for its time and attention to this matter, and for its consideration of this request.

Respectfully Submitted,

Baker & Hostetler LLP

By: s/ Erin M. Sales
Erin M. Sales
Counsel for Defendant

The request to stay discovery is DENIED.

SO ORDERED.

Dated: July 1, 2020
New York, New York



ANALISA TORRES
United States District Judge

The Marks Law Firm, P.C.

By: s/ Bradley G. Marks
Bradley G. Marks
Counsel for Plaintiff